

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**HARTFORD UNDERWRITERS INSURANCE
COMPANY,**

PLAINTIFF,

VS.

CIVIL ACTION NO. 4:05CV50-P-B

FOUNDATION HEALTH SERVICES, INC., ET. AL.,

DEFENDANTS.

FINAL JUDGMENT

This matter comes before the court upon Hartford Underwriters Insurance Company's Motion for Declaratory Judgment and for Grant of Partial Summary Judgment [41-1]. After due consideration of the motion and the responses thereto, the court finds as follows, to-wit:

For the same reasons discussed in its November 17, 2006 Order denying Hartford's motion for declaratory judgment and partial summary judgment and granting Foundation Health Services, Inc. and Magnolia Healthcare Inc.'s motion for partial summary judgment in the companion case of *Magnolia Healthcare Inc., et al. v. Hartford Underwriters Insurance Company, et al.*, Cause Number 4:04CV370-P-B, the instant motion should be denied. In the aforementioned Order, the court concluded that Mississippi law applies to the question of whether Hartford owes Foundation and Magnolia the duty to provide independent counsel pursuant to *Moeller v. American Guarantee and Liability Insurance Company*, 707 So.2d 1062 (Miss. 1998). Thus, Hartford owes these insureds that duty.

IT IS THEREFORE ORDERED AND ADJUDGED that:

(1) Hartford Underwriters Insurance Company's Motion for Declaratory Judgment and for Grant of Partial Summary Judgment [41-1] is **DENIED**; therefore,

(2) Hartford Underwriters Insurance Company's Complaint for Declaratory Judgment is
DISMISSED WITH PREJUDICE; and

(2) This case is **CLOSED**.

SO ORDERED this the 22nd day of November, A.D., 2006.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE